

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| -----X | | |
| AVI & CO NY CORP., | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| -against- | : | Case No. 22-cv-10599 (PAE) |
| CHANNELADVISOR CORPORATION, | : | |
| | : | |
| Defendant. | : | |
| -----X | | |

DEFENDANT CHANNELADVISOR CORPORATION'S
NOTICE OF MOTION TO DISMISS

Pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, defendant ChannelAdvisor Corporation hereby moves to dismiss claims asserted by Plaintiff. ChannelAdvisor moves to dismiss Plaintiff's Second Claim for Relief (unjust enrichment), Third Claim for Relief (deceptive trade practices pursuant to New York General Business Law § 349), Fourth Claim for Relief (false advertising pursuant to New York General Business Law § 350), Sixth Claim for Relief (breach of implied warranty of merchantability), Seventh Claim for Relief (negligent misrepresentation), and Eighth Claim for Relief (fraudulent inducement) in their entirety because they fail to state a claim and for the separate reason that Plaintiff's Seventh and Eighth Claims for Relief fail to meet the heightened pleading standard required by Rule 9(b). With respect to the First Claim for Relief (breach of contract) and the Fifth Claim for Relief (breach of express warranty), ChannelAdvisor moves to dismiss Avi's demand for an award of damages that are expressly excluded by the parties' contract (lost profits and any form of indirect, special, incidental, punitive, or

consequential damages) and for an award of damages in an amount that exceeds the contractual cap limiting total damages.

In support of this motion, ChannelAdvisor Corporation relies on its Memorandum of Law, the pleadings, and the contract documents attached to the declaration of Richard Cornetta, filed on 2 March 2023.

Dated: March 2, 2023

Respectfully submitted,

MORNINGSTAR LAW GROUP

/s/ Jeffrey L. Roether

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Corporation*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Defendant ChannelAdvisor Corporation's Notice of Motion to Dismiss was served this day on all counsel of record via the Court's electronic filing system.

Dated: March 2, 2023.

MORNINGSTAR LAW GROUP

/s/ Jeffrey L. Roether